executors living at the time must join in the sale, 3 Day 384.

When a deed was executed by two executors during the lifetime of third and it did not appear that he had given his assent, the deed was held ineffectual as a conveyance. 9 N. Y. S. 389.

General opinion seems to be where one executor acts and it is expressly or impliedly assented to by the others it is valid. *Banus v. Drake,* 50 N. C. 153; *Silverthorn v. McKinister,* 12 Pa. (2 Jones) 67; *Dunn's Ex'rs v. Renick,* 40 W. Va. 549.

RAILROADS—PUBLIC HIGHWAYS—SHIFTING OF CARS.—LONG V. MISSOURI PAC. RY. CO., 91 S. W. (Mo.) 1012.—*Held,* that "shunting" cars and "flying the switch" across public highways without warning is negligence, *per se.*

This doctrine is by no means settled. Some jurisdictions hold that it extends to trespassers where there is no public highway. *Patton v. East Tenn., V. & G. R. Co.,* 89 Tenn. 370. *Contra,—Wright v. Boston & A. R. Co.,* 142 Mass. 396. The general rule seems to be that the question of negligence is to be left to the jury. *Delaware, L. & W. R. Co. v. Converse,* 139 U. S. 469; *Chicago, R. I. & P. R. Co. v. Digman,* 56 Ill. 487. Some jurisdictions hold that contributory negligence on the part of the traveler does not preclude his right of recovery. *Penn R. Co. v. McGirr,* 61 Md. 108. *Contra,—Haley v. N. Y. Central & H. R. R. Co.,* 7 Hun. 84.

RAILROADS—INJURIES TO PEDESTRIANS—LIABILITY TO TRESPASSERS.—BROWN V. BOSTON & M. R. R., 64 ATL. 194 (N. H.). A trespasser, an old and partially deaf woman, while walking on defendant's track was killed by an express train. Neither engineer nor fireman saw trespasser on the track. *Held,* that a railroad company is liable for negligently killing deceased while she was walking by the track, even though she was a trespasser, providing she was in the exercise of due care and the defendant's servants failed to exercise due care to discover her presence in such a situation, when circumstances existed which would have put a person of average prudence on inquiry. Young, J., *dissenting.*

There seems to be no other decided case which carries to such an extent the doctrine promulgated by this case. On the other hand, the weight of authority is to the contrary. The well settled general rule is that railroads are liable for injuries to trespassers only when the railroad has been guilty of gross negligence. *Western & A. R. R. v. Meigs,* 74 Ga. 857; *Richmond & D. R. Co. v. Tay,* 106 N. C. 404. This rule is usually construed to mean that the trespasser in order to recover must show that the persons in charge of the train saw him and after seeing him failed to exercise reasonable diligence to prevent the injuries. *Gherkins v. Louisville & N. R. Co.,* 30 S. W. 651 (Ky.). Another class of cases holds that the only duty a railroad company owes a trespasser is to refrain from wantonly and wilfully injuring him. *Ill. Cent. R. R. v. Eicher,* 202 Ill. 556.

RAILROADS—CROSSING ACCIDENT—CONTRIBUTORY NEGLIGENCE.—SANGUINETTE V. MISS. RIVER, ETC., RY. CO., 95 S. W. 386 (Mo.).—*Held,* where a person, familiar with the railroad crossing, was being driven in a vehicle by another, but did not look for an approaching train, he was guilty of contributory negligence as a matter of law and an action for his death would not lie.

In the absence of statute, the general rule in the United States is that there is no presumption of negligence on the part of a railroad company for an injury to a non-passenger. *Cooley on Torts,* 2nd Ed., p. 797. The care required by the latter, however, is such as an ordinarily prudent man would exercise under like circumstances. *Phila. R. R. Co. v. Publes,* 67 Fed. 591; *Wilds v. Hudson River R. Co.,* 29 N. Y. 315. But in the application of this rule the courts are somewhat in conflict. Most courts hold that it is sufficient to look in both directions for an approaching train. *Rodrian v. N. Y., etc., R. R. Co.,* 125 N. Y. 526; *Chicago B. & G. R. Co v. Van Pattern,* 74 Ill. 91. The Federal Courts agree that the traveler must stop, also *Dunning v. Bond,* 38 Fed. 813. The fact that the occupant of a vehicle is driven by another does not relieve him. *Durkee v. Delaware & H. Canal Co.,* 88 Hun. 471; *Dean v. Penn. R. Co.,* 129 Pa. 514. Many states hold that where a crossing is particularly dangerous, the degree of care is more imperative. *Thomas v. Delaware L. & W. R. Co.,* 8 Fed. 729. *Wilas v. Hudson River Co.,* 29 N. Y. 315. Missouri formerly held that it was not necessary to "stop, look and listen." *Zimmerman v. Hannibal St. J. R. Co.,* 71 Mo. 476. The weight of authority to-day is that this is not negligence *per se,* but is only evidence thereof. *Terre Haute I. R. Co. v. Voelker,* 129 Ill. 540; *Winslow v. Boston & A. R. Co.,* 11 N. Y. 83.

REORGANIZATION OF MUTUAL INSURANCE COMPANIES.—HUBER V. MARTIN, 105 N. W. 1031 (WISCONSIN).—*Held,* that a statutory scheme for the reorganization of a mutual insurance company and the transfer of its assets, including an accumulated surplus, to its successor, is in conflict with the constitutional inhibition against laws impairing the obligation of contracts and in violation of the provisions of the Federal Constitution as to the equal protection of the laws and the deprivation of property without due process of law.

SECURITIES—SALE OF PLEDGED STOCK—CONTENT V. BANNER.—76 N. E. 913 (N. Y.).—*Held,* that where a stockbroker advances all the money and buys securities for a customer, a written notice to the customer to take up the securities so bought, or supply margins for carrying them, and stating that unless he does so before a certain date the broker will sell the stock for his account and hold him responsible for the amount, is defective, where it contains no statement as to the time or place of the sale, and that, in the absence of any agreement dispensing with notice, a sale on the "curb" constitutes a conversion though the customer has failed to respond on the date stated.

TORTS—MASTER AND SERVANT—EMPLOYER'S LIABILITY TO SERVANT.—BANNON V. N. Y. CENT. & H. R. R. Co., 98 N. Y. SUPP. 770. While one acting as foreman attempted to move a tie across the railroad track, a train struck the tie and injured a member of the crew.—*Held,* that the foreman was then acting as a fellow-servant and that the employer was not liable to the workman for his negligence under employer's Liability Act, Laws 1902, p. 1748, c. 600. Law recognizes that employee may have two duties; those of a superintendent and those of an ordinary workman. *Kellard v. Rooke,* 192 B. D. 585; *Cushman v. Chase,* 156 Mass. 342. If the act is within the duty of a servant, the one doing it, regardless of his rank, is a fellow-servant of the one injured by its negligent performance. *Geoghegan v. Atlas S. S. Co.,* 146 N. Y. 369;